

1 HONORABLE RICHARD A. JONES  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 METH LAB CLEANUP, LLC,

11 Plaintiff,

12 v.

13 BIO CLEAN, INC., et al.,

Defendants.

CASE NO. C14-1259RAJ

ORDER

14 **I. INTRODUCTION**

15 This matter comes before the court on consideration of Defendant Theresa Borst's  
16 motion to dismiss Plaintiff's claims against her. For the reasons stated herein, the court  
17 DENIES the motion. Dkt. # 18.

18 **II. BACKGROUND**

19 The court relies today solely on the allegations of the complaint of Plaintiff Meth  
20 Lab Cleanup, LLC ("MLC"). That complaint is straightforward. MLC dispatches and  
21 trains contractors nationwide to clean properties that have been used to manufacture or  
22 traffic in illegal drugs. It also provides training for contractors who wish to engage in  
23 similar services. Defendant Bio Clean, Inc. ("Bio Clean") is a Washington corporation  
24 who provides a host of cleanup services in Washington. Among those services is the  
25 cleanup of properties that have been used to manufacture or traffic in illegal drugs. Bio  
26 Clean (including at least four of its employees) attended MLC trainings.

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28 ORDER – 1

1 Beginning in June 2013, Bio Clean began advertising its drug cleanup services  
2 using a tab on its website entitled “METH LAB CLEANUP.” It also uses a “meth lab  
3 cleanup” metatag (among others) to identify its website to internet search engines. It has  
4 continued that conduct despite the receipt of cease-and-desist letters from MLC in July  
5 2013 and February 2014.

6 MLC, which has federally registered both “Meth Lab Cleanup” and “Meth Lab  
7 Cleanup LLC” as marks for various services, sued Bio Clean, contending that Bio  
8 Clean’s use of “Meth Lab Cleanup” violated the Lanham Act as well as Washington  
9 trademark law. There is no contention that MLC has failed to state claims against Bio  
10 Clean.

11 Instead, Bio Clean’s principal, Theresa Borst, has moved to dismiss MLC’s claims  
12 against her. She contends that the complaint is insufficient to state claims against her  
13 because it makes no allegations about her other than that she is the “sole owner, principal  
14 and moving force behind Bio Clean.” Compl. ¶ 28.

15 The court now considers Ms. Borst’s motion to dismiss.

### 16 III. ANALYSIS

17 Ms. Borst invokes Fed. R. Civ. P. 12(b)(6), which permits a court to dismiss a  
18 complaint for failure to state a claim. The rule requires the court to assume the truth of  
19 the complaint’s factual allegations and credit all reasonable inferences arising from those  
20 allegations. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007). The plaintiff must  
21 point to factual allegations that “state a claim to relief that is plausible on its face.” *Bell*  
22 *Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007). If the plaintiff succeeds, the complaint  
23 avoids dismissal if there is “any set of facts consistent with the allegations in the  
24 complaint” that would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*, 556 U.S.  
25 662, 679 (2009) (“When there are well-pleaded factual allegations, a court should assume  
26 their veracity and then determine whether they plausibly give rise to an entitlement to  
27 relief.”). The court typically cannot consider evidence beyond the four corners of the  
28 ORDER – 2

1 complaint, although it may rely on a document to which the complaint refers if the  
2 document is central to the party's claims and its authenticity is not in question. *Marder v.*  
3 *Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). The court may also consider evidence subject  
4 to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

5 In this case, the complaint's allegation that Ms. Borst is the "sole owner" and  
6 "moving force" behind Bio Clean is sufficient, when combined with more detailed  
7 allegations about Bio Clean's wrongdoing, to state claims against her. Compl. ¶ 28.  
8 Again, Ms. Borst does not contest that MLC has pleaded claims against Bio Clean. The  
9 Lanham Act imposes liability for trademark infringement and other acts of unfair  
10 competition on a corporate officer who authorizes, directs, or participates in the unlawful  
11 acts. *Committee for Idaho's High Desert, Inc. v. Yost*, 82 F.3d 814, 823-24 (9th Cir.  
12 1996); *Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 734 (9th Cir.  
13 1999). It is plausible to conclude, based on the allegation that Ms. Borst is Bio Clean's  
14 "sole owner" and "moving force" that she authorized, directed, or participated in the  
15 actions of Bio Clean that MLC contends violated the Lanham Act. That conclusion is  
16 strengthened when the court considers the allegation that MLC sent two cease-and-desist  
17 letters to Ms. Borst as Bio-Clean's president. Compl. ¶ 39 & Ex. E (Jul. 24, 2013 letter);  
18 Compl. ¶ 41 & Ex. G (Feb. 20, 2014 letter). It is plausible to conclude that Ms. Borst  
19 received those letters, was aware of Bio Clean's allegedly unlawful activity, and either  
20 explicitly authorized Bio Clean to continue that activity, or implicitly authorized it by  
21 doing nothing.

22 As to MLC's claim invoking Washington's common law, the general rule in  
23 Washington is that a corporate officer who "participates in wrongful conduct or with  
24 knowledge approves of the conduct" is liable along with the corporation for wrongdoing.  
25 *Grayson v. Nordic Constr. Co.*, 599 P.2d 1271, 1274 (Wash. 1979). The court is aware  
26 of no precedent considering the application of this general rule to Washington's common  
27 law of trademarks and unfair competition. Because Ms. Borst does not discuss  
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1 Washington law in her motion to dismiss, the court will not delve deeper into the issue.  
2 The court assumes that the general rule applies. Applying that rule, the complaint states  
3 claims against Ms. Borst for the same reasons that it states Lanham Act claims against  
4 her.

5 **IV. CONCLUSION**

6 For the reasons previously stated, the court DENIES Ms. Borst's motion to  
7 dismiss. Dkt. # 18.

8 DATED this 15th day of January, 2015.

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12 The Honorable Richard A. Jones  
13 United States District Court Judge  
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